IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3467 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

RAMESHBHAI V PATEL & 34 - Petitioner(s)

Versus

STATE OF GUJ & 5 - Respondent(s)

==========

Appearance :

NANAVATI & NANAVATI for Petitioner(s) : 1 - 35.
Ms.Rita Chandarana, AGP for Respondent(s) : 1,
MR HS MUNSHAW for Respondent(s) : 2 - 6.

==========

CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 21/01/2006

CAV JUDGMENT

1. By filing this petition under Article 226 of the

Constitution of India, the petitioners have prayed for issuance of a writ of mandamus or any other writ, order or direction restraining the respondents from terminating the services of the petitioners. Further prayer is also made to direct the respondents to treat the petitioners in continuous service right from their first date of appointment stated in column 3 of the statement at Annexure `B' in the compilation and to direct the respondents to grant consequential benefits to the respondents. Further prayer is also made to direct the respondents to make the petitioners permanent in service and to give all the benefits which are available to the permanent employees working under the respondents with retrospective effect. Further prayer is also made to quash and set aside the order at Annexure `I' in the compilation and also to direct the respondents to reinstate petitioner no.30 on her original post with continuity of service.

2. I have given my thoughtful consideration to the submissions made by both the parties apart from inviting my attention to the relevant portions of the judgments of the Honourable Apex Court in the cases of i) Shivshanker S Pathak V/s State of Gujarat and others, reported in 1997(1) GLH 568, (ii) Jaswant Singh and others V/s Union

of India and others, reported in (1979)4 SCC 440, Sub-Divisional Soil Conservation Officer, Idar and Another V/s M.M.Saiyed, reported in 1990(1) GLR 495, State of Rajasthan V/s Kunji Raman, reported in AIR 1997 SC 693 and D.K.Yadav V/s J.M.A. Industries Ltd., reported in (1993) 3 SCC 259, 1994(1) GLR 1002 and 2004(3) GLR 33 and the material on record to justify their respective stands.

3. It can be noticed from the record that this Court (Coram : S.B.Majmudar and I.C.Bhatt,JJ) by its order dated 12.8.1988 has clarified that the ad-interim relief granted earlier in terms of para 21-D will not survive any further. It is to be noticed that the petitioners vide para 21-D has prayed to restrain the respondents, their officers, servants and agents from terminating the services of the petitioners. As stated above, this Court vide order dated 12.8.1988 has clarified that the prayer in terms of para 21-D will not survive any further.

4. It is also required to be noted that earlier the petitioners have approached this Court by way of filing the writ petition, being Special Civil Application No. 2084 of 1985, challenging the termination with effect

from 15.3.1985, which came to be rejected vide order dated 8.4.1985. Thereafter, the petitioners were again employed as daily wagers on scarcity relief work and their services have been terminated from 12.8.1988.

5. It can be noticed from the record that termination of the petitioners was because of completion of scarcity of relief work. It is to be noted here that the petitioners are daily wagers and their services alleged to have been terminated by the respondents. When the petitioners were engaged on daily wage basis, they are required to first avail the alternative efficacious remedy of approaching the Labour Court under the Industrial Disputes Act, 1947. Admittedly, in the present case, the petitioners have not availed the alternative remedy.

6. Considering the facts and circumstances of the case, I am of the considered opinion that the petitioners should first avail the alternative remedy available to them under the Industrial Disputes Act. Under the circumstances, this petition is not required to be entertained since the alternative remedy by way of approaching the Labour Court is available to the petitioners under the Industrial Disputes Act, 1947.

7. In the result, this petition fails and the same is dismissed. Rule is discharged.

(SHARAD D.DAVE,J)

srilatha